GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR)

Labour Dispute :—Industrial Dispute between the Workmen and the Management of City Dress Manufacturers, SJP Road, Bangalore 1.

Award of the Labour Court, Bangalore—Published.

Read the following papers :

(1) Letter No. LCB 97 67-68 dated 15th November 1967 from Shri P. T. Kadkol, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 15th day of November 1967.

Present :

Sri P. T. Kadkol, B.Sc., LL.B., ... *Presiding Officer.*

Reference No. 127 of 1966.

Workmen represented by the Secretary, Bangalore General, Labour Union, S. C. Road, Bangalore-9 ... *I Party.*

Vs

The Management of City Dress Manufacturers SJP Road, Bangalore-2. .. *II Party.*

Reference:

Government Order No. LMA 485 LLD 66, dated 2th October 1966.

AWARD

The Government of Mysore being of opinion that an industrial dispute exists between the workmen and the management of M/s. City Dress Manufacturers, Bangalore, have referred it to this Court for adjudication under Section 10 (1) (c) of the Industrial Disputes Act, 1947, by their Order No. LMA 485 LLD

66, dated 28th October 1966, setting out the following points of dispute for adjudication :—

"Is the Management of City Dress Manufacturers, Silver Jubilee Park Road, Bangalore-3 justified in refusing employment to Abdul Hameed Khan from 1st July 1965?"

If not, is he entitled to reinstatement with back wages and continuity of service".

2. The aggrieved workman in this case is Abdul Hameed Khan. His cause has been sponsored by the General Labour Union, Bangalore. This Union, as representing the workmen, is the first party and the Management of the City Dress Manufacturers, Bangalore is the Second Party. Advocate Mr. Krishnaiah, in his capacity as the President of the Mysore State Unit of the Bharatiya Mazdoor Sangh, has appeared for the Union. Advocate Messrs. B. Vedant Iyengr and K. R. Srinivas Rao have appeared for the Management.

3. The Second Party, is an Establishment manufacturing ready made garments and selling them. Abdul Hameed Khan entered service with this Establishment, some years back. He was in service till 14th March 1965. He was working as "Iron Master" which is no more than a workman doing the work of ironing the stitched clothes. These facts are admitted on both hands.

4. The case as alleged by the Union in the statement of claims, on behalf of the workman, is as under :—

On 14th March 1965, Abdul Hameed Khan met with an accident, when going on a bicycle and sustained severe injuries. The Doctors advised him complete rest for three months. The Management granted him leave of absence for this period. During this period, the Management also paid him Rs. 70 in three instalments, towards his medical expenses and also paid him the bonus for the year 1965. He was informed by the Doctors in the last week of June, that he was physically quite fit to resume his duties. So, he went to the Management on 28th June 1965 and reported for duty. But the Management asked him to join on 1st July 1965. When he went for duty on that day, the proprietor of the Establishment told him that his services had been terminated

as he was inefficient to discharge his duties on account of the injuries sustained by him on 14th March 1965. His representations that he was quite fit for duty went unheeded.

The termination of his service by the Management is illegel and unjustified, and smacks of victimisation and unfair labour practice. Hence it should be set aside and he be reinstated in his former post, with full back wages and continuity of service etc :—

5. J. Narayana Rao is the proprietor of the Second Party Establishment. He has submitted his statement of objections raising the following contentions.

He is not aware of any accident that Abdul Hameed Khan is alleged to have met with on 14th March 1965. He had not granted any kind of leave to the aggrieved workman. He has not paid Rs. 70/- or any amount to Abdul Hameed Khan towards medical expenses. The aggrieved workman has chosen to stay away from work, of his own accord, without permission, from 15th March 1965. Employment was not refused to him on 1st July 1965. In fact, he never reported for duty on that day. The Management has neither dismissed him nor terminated his services. It denies all allegations to the contrary made by the first party, in the statement of claims. The Management was fully justified in assuming that Abdul Hameed Khan had abandoned service, since he had remained absent from 15th March 1965, without permission or leave. Hence he is not entitled to any of the reliefs claimed by him and therefore, the Reference be rejected etc :—

6. On these pleadings, the following issues have been framed *Vide* order Sheet dated 16th February 1967; and set down for hearing :—

1. Does the First Party prove that Abdul Hameed Khan has been refused employment by the Second Party ?
2. Does the Second Party prove that the workmen has stayed away from work voluntarily and quitted his job ?
3. What Award ?

Parties were asked to lead evidence on three issues and they have done so. The First Party has examined three witnesses

(W. W. 1 to W. W. 3) and produced two documents marked Exts. W. 1 and W. 2. The Second Party has examined one witness (M. W. 1). This is all the evidence in the case.

7. The point at issue is simple. It is not, however easy of decision, on account of the scanty evidence led by both the parties. One fact admitted on both hands and also proved by evidence is that Abdul Hameed Khan has not attended to his duties in the Second Party Establishment, since 15th March 1965 According to the First Party, he remained absent from duty because he met with an accident on 14th March 1965 in the evening when going on a bicyle; the Doctors advised him rest for three months; and he intimated this fact to the Management and took leave of absence. The questions that arise for decision would be (a) Whether he had met with an accident and (b) whether he had taken leave. To prove these points, three witnesses have been examined. They are, Abdul Hameed Khan (W. W. 1), his brother Anwarulla Shariff (W. W. 2) and his neighbour Khatija Begum (W. W. 3).

8. Abdul Hameed Khan has stated in his examination in-chief that as a result of the accident there was a fracture of the bone of his left shulder; he went to the Victoria Hospital, Bangalore on 16th March 1965; the Doctor there, took an 'X. Ray photo of his shoulder; he tied the broken bone with a cloth bandage but did not keep it in plaster and discharge him: the Doctor also told him that he should take rest for 3 months. Then in the cross-examination he has stated that on 16th March 1965, the 'X' Ray photo was taken; the negetive of the X' Ray photo was not given to him by the Doctor on 16th March 1965; the Doctor told him orally on 16th March 1965, that he should take rest for 3 months; the bandage tied on 16th March 1965 was removed and another bandage was tied on 17th March 1965; the negative of the 'X' Ray photo was given to him by the Doctor on 17th March 1965; he had been given an out-patient card by the Hospital, but he had lost it.

9. Here, it is better to recall the relevant dates. The accident took place on 14th March 1965 at about 7-30 P. M. as stated by Abdul Hameed Khan. He has, however gone to the Hospital on 16th March 1965 Why did he not go to the Hospital on 15th March 1965? The evidence does not afford any answer to this question. Then we have it from Abdul Hameed Khan that it was on 16th March 1965 that the Doctor told him

that he should take rest for three months. It follows, therefore, that he could not have any idea on 15th March 1965, as to the extent of the injury sustained by him, nor of the period for which he would be required to take rest. Even then, he has stated in his examination in-chief, that on 15th March 1965, he sent a written application to the Management, with one Khatija Begum seeking leave for three months. According to him, the application for leave was written by his brother, Anwarulla Shariff (W. W.2) and it was handed over to Khatija Begum (W. W. 3) for delivery, to the Management. Abdul Hameed Khan has also stated that Narayana Rao M. W.1 sent him Rs. 20 towards the medical treatment on 15th March 1965 itself.

10. Anwarulla Shariff (W. W. 2) the younger brother of Abdul Hameed Khan has not given any dates. He has stated that one day his brother returned home saying that he had met with an accident; his brother had an injury on the left shoulder and the Doctor said that there had been a dislocation of the bone; he (witness) was not present when the Doctor said so; his brother asked him to write a leave letter for him and so, he wrote it; his brother handed over that leave letter to Khatija Begum for being delivered to the Management; his brother had asked for some money also, in that leave letter. In his cross-examination, he has stated that he did not remember the date on which he wrote the leave letter. He has not stated the period for which the leave was applied for. He is an educated man and has passed his S.S.L.C. Examination.

11. Even though Anwarulla Shariff, an educated man serving as a Mechanic in the B.E.L. Bangalore, is not able to tell the dates, Khatija Begum (W.W. 2) has been able to say that Abdul Hameed Khan met with an accident on 14th March 1965 (I have noted in her deposition that the date was given by the witness herself) and on 15th March 1965 in the morning, he called her and gave her a leave letter for being handed over to the Management and she did so. She has also added that Narayana Rao kept the leave letter with himself and in the evening gave her Rs 20 with instructions to hand over the amount to Abdul Hameed Khan and also tell him that the leave had been granted and she did so. This witness was also working as a Tailor in the second party establishment at that time and the Management has terminated her services. It is not unlikely that she has a bias against the Management, as suggested by its learned Advocate.

12. Anwarulla Shariff has been examined mainly to state that he wrote the leave letter and Khatija Begum has been examined to say that she delivered it to Narayana Rao and Narayana Rao told her that the leave had been sanctioned. Leaving aside Anwarulla Shariff who does not remember the date, it can be seen that Abdul Hameed Khan and Khatija Begum are definite on the point that the leave letter was delivered to Narayana Rao on 15th March 1965 It is not possible to know how Abdul Hameed Khan thought that he would require rest and leave of absence for three months, even before he met the Doctor on 16th March 1965.

13. Then it should be noted that it has not been mentioned in the claim statement that such a letter had been sent to the Management. The material allegations therein are :—

> "The Doctors advised him to take 3 months rest...The workman was also granted leave by the Management for the said period of 3 months."

14. In this connetion, the letter written by Abdul Hameed Khan to the Commissioner of Labour requires to be noted. It is at Ex.W. 1. It does not bear any date But the court fee stamp affixed to it shows that it was sold on 7th July 1965. Abdul Hmeed Khan has stated therein :—

> ".....I met with an accident on 14th March 1965 at 6 P.M. Hence I was forced to stay at home to recover from the injuries of this incident and I had requested him (which in the context means the employer) to bear with my absence, which he had agreed to orally.
>
> After recovery I approached my employer and when I wanted to report for duty, the employer refused to take me to work although I am physically fit for work. He also told me orlly that my services are not needed..."

In this letter, Abdul Hameed Khan has not at all mentioned how much leave he had asked for and how much leave had been granted and on what day he reported for duty. On the other hand it conveys a sense that the employer and the emplopee had met and the employer had agreed to bear with the absence of the employee.

15. Now coming back to the accident, it is stated to have taken place in the early part of the evening of 14t March 1965. According to Abdul Hameed Khan, he had sustained a fracture. I am unable to understand why he did not go to the Victoria

Hospital immediately. Then we find that he did not also go to the Hospital on 15th March 1965 I cannot understand what prevented him from going to the Hospital on 15th March 1965, in spite of the severe injury, he says, he had He appears to have been more anxious to send an application for leave of absence for three months on 15th March 1965 then to attend the Hospital for taking treatment. This is extremely unusual, regard being had to the ordinary course of human conduct. It is also very unusual that he should apply for leave of absence for 3 months on 15th March 1965, though the Doctor tells him, the next day, that he requires rest for 3 month. Then we also find that he has not produced the 'X' ray negative admitted to be in his possession. The out patient slip given to him by the Hospital has also not been produced. The doctor too has not been examined. In view of all these facts and circumstances a serious doubt arises regarding the truth of the case sought to be made out by Abdul Hameed Khan.

16. On the other hand Narayana Rao (M.W.1) has sworn that he had not received any leave letter from Abdul Hameed Khan. He has also sworn that he never terminated the services of the workman and added that the workman had stayed away from work from 15th March 1965. He has admitted that he has maintained an attendance register. He has denied the suggestion that therein, he has marked the workman to be on leave. It was open to the First Party to call upon the Management to produce the attendance register. It has not been done so. Then it is the case of the First Party that Narayana Rao had sent Rs. 20 with Khatija Begum and Rs. 20 with the wife of Abdul Hameed Khan towards medical expenses, Narayana Rao has denied these payments. He has, however, admitted that on 2nd April 1965, he did pay the Ugadi Bonus to Abdul Hameed Khan. It was open to the First Party to call upon Narayana Rao to produce his account books and examine whether the payments alleged by it were recorded in them. This too has not been done.

17. Now assuming that Abdul Hameed Khan had met with an accident on 14th March 1965, the question is whether the injury was really so serious as to keep him away from work for 8 months? If there was either a fracture or a dislocation of the bone, the Doctor would not have sent him away by merely tying a cloth bandage. The injured bone would have been put in plaster. It is not possible to guage the extent of the injury, in

the absence of medical evidence, which, though available, has not been adduced.

18. Then let us assume that Abdul Hameed Khan had applied for leave of absence for 3 months and it had been granted by the Management. The leave would expire on 15th June 1965. Even then, we find that he has not reported for duty till 28th June 1965, on his own admission made in the claim statement. It is not his case that he got his leave extended for a further period. Abdul Hameed Khan stated that when he reported for duty on 28th June 1965, he was asked to resume on 1st July 1965, and when he went for work on that day, he was told that his services had been terminated. His testimony on this point stands all alone and Narayana Rao has denied it.

19 To conclude the discussion, we find that, even assuming that Abdul Hameed Khan had met with an accident the injury or the injuries sustained by him are not proved to be so severe as to keep him away from work for 3 months. On the other hand, the circumstances point to the contrary There is no satisfactory evidence to hold that he sent a leave application and the leave was sanctioned. The evidence of his brother Anwarulla Shariff is naturally interested and that of Khatija Begum, very probably, biassed. The admitted facts and proved circumstances are more consistent with Abdul Hameed Khan having stayed away from work voluntarily, for reasons best known to himself than with his story that he had met with an accident and taken leave of absence for three months. The long and continued absence of Abdul Hameed Khan from 15th March 1965, was a circumstance to justify the Management to assume that he had abandoned and given up his job. In these circumstances, therefore, I hold that the First Party has not been able to prove that employment was refused to the workman and the Management was right in assuming that he had left the job. Hence I record my finding on the first issue in the negative and on the second issue, in the affirmative.

20. In the result, I make an Award as under :—

AWARD.

This Reference and the demands made by Abdul Hameed Khan and the first party union on his behalf, do stand rejected, with no order as to costs.

P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

ORDER

Bangalore, dated 2'st November 1967.

S.O. 2331.—WHEREAS by State Government Order No. FCL 485 LLD 66, dated 28th October 1966, the Industrial Dispute between the Workmen and the Management of City Dress Manufactures, SJP Road. Bangalore–2, was referred to the Labour Court, Bangalore for ajdudication.

AND WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute :

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore, are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

(No. FCL 485 LLD 66.)

By Order and in the name of the Governor of Mysore,

1495 G. G. PUROHIT, *Under Secretary*.